

ASSEMBLY BILL

No. 878

Introduced by Assembly Member Chavez

February 18, 2005

An act to amend Section 2225 of the Civil Code, relating to felonies, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 878, as introduced, Chavez. Felonies: profits.

Existing statutory law, held unconstitutional by the California Supreme Court, imposes a trust upon the proceeds and profits from the preparation for sale, the sale of rights to, or the sale of materials that include, or are based on the story of, a crime for which a felon was convicted. That trust is held for the benefit of victims of crime.

This bill would instead impose a trust upon all proceeds and profits gained by a convicted felon from the preparation for sale, the sale of rights to, or the sale of materials, related to a felony for which that felon was convicted, and upon 50% of the proceeds or profits gained by any other person, other than a victim. The bill would define "materials" for purposes of the bill, and would state that it does not apply to materials that make only a passing reference to, or mention of, the crime. Any money in the trust that is not claimed by a beneficiary of the trust after a specified time period would be allocated to the Restitution Fund.

Because the bill would expand the source of deposits into the Restitution Fund, a continuously appropriated fund, the bill would make an appropriation.

Under existing law, any violation of an order of a court made pursuant to these provisions is punishable as contempt.

Because the bill would expand the class of persons and types of materials to which these provisions would apply, it would expand the scope of a crime and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature declares that a victim should be
2 compensated for any and all displacements or incurrences
3 because of a crime committed against him or her, and that no
4 convicted criminal should reap any financial benefit from
5 committing a crime.

6 SEC. 2. Section 2225 of the Civil Code is amended to read:

7 2225. (a) As used in this section:

8 (1) "Convicted felon" means any person convicted of a felony,
9 or found not guilty by reason of insanity of a felony committed in
10 California, either by a court or jury trial or by entry of a plea in
11 court.

12 (2) "Felony" means a felony defined by any California or
13 United States statute.

14 (3) (A) "Representative of the felon" means any person or
15 entity receiving proceeds or profits by designation of that felon,
16 on behalf of that felon, or in the stead of that felon, whether by
17 the felon's designation or by operation of law.

18 (B) "Profiteer of the felony" means any person *other than a*
19 *victim, as defined in paragraph (4), who sells or transfers for*
20 *profit any memorabilia or other property or thing of the felon, or*
21 *any materials, as defined in paragraph (6), the value of which is*
22 *enhanced by the notoriety gained from the commission of the*
23 *felony for which the felon was convicted. This subparagraph*
24 *shall does not apply to any media entity reporting on the felon's*
25 *story or on the sale of the materials, memorabilia, or other*
26 *property or thing of the felon. Nor shall it apply, or to the sale of*

1 the materials, ~~as the term is defined in paragraph (6),~~ where the
2 seller is exercising his or her first amendment rights. This
3 subparagraph also ~~shall~~ *does* not apply to the sale or transfer by a
4 profiteer of any other expressive work protected by the First
5 Amendment unless the sale or transfer is primarily for a
6 commercial or speculative purpose.

7 (4) (A) ~~“Beneficiary~~ *“Victim”* means a person who, under
8 applicable law, other than the provisions of this section, has or
9 had a right to recover damages from the convicted felon for
10 physical, mental, or emotional injury, or pecuniary loss
11 proximately caused by the convicted felon as a result of the crime
12 for which the felon was convicted.

13 (B) If a ~~beneficiary~~ *victim* described in subparagraph (A) has
14 died, ~~“beneficiary~~ *“victim”* also includes a person or estate
15 entitled to recover damages pursuant to Chapter 4 (commencing
16 with Section 377.10) of Title 3 of Part 2 of the Code of Civil
17 Procedure.

18 (C) If a person has died and the death was proximately caused
19 by the convicted felon as a result of the crime for which the felon
20 was convicted, ~~“beneficiary~~ *“victim”* also includes a person
21 described in Section 377.60 of the Code of Civil Procedure and
22 any beneficiary of a will of the decedent who had a right under
23 that will to receive more than 25 percent of the value of the estate
24 of the decedent.

25 (5) ~~“Beneficiary’s~~ *“Victim’s interest”* means that portion of
26 the proceeds or profits necessary to pay the following:

27 (A) In the case of a ~~beneficiary~~ *victim* described in
28 subparagraph (A) or (B) of paragraph (4), those damages that,
29 under applicable law, other than the provisions of this section,
30 the ~~beneficiary~~ *victim* has or had a right to recover from the
31 convicted felon for injuries proximately caused by the convicted
32 felon as a result of the crime for which the felon was convicted.

33 (B) In the case of a ~~beneficiary~~ *victim* described in
34 subparagraph (C) of paragraph (4), those damages that, under all
35 the circumstances of the case, may be just.

36 (C) A ~~beneficiary’s~~ *victim’s interest* shall be reduced by the
37 following amount:

38 (i) Money paid to the ~~beneficiary~~ *victim* from the Restitution
39 Fund because of the crime for which the felon was convicted.

1 (ii) Money paid to the ~~beneficiary~~ *victim* by the convicted
2 felon because of a requirement of restitution imposed by a court
3 in connection with the crime for which the felon was convicted.

4 (iii) Money paid to the ~~beneficiary~~ *victim* because of a
5 judgment against the convicted felon based upon the crime for
6 which the felon was convicted.

7 (D) In the case of an unsatisfied existing judgment or order of
8 restitution against the convicted felon and in favor of a
9 ~~beneficiary~~ *victim*, any money paid to the ~~beneficiary~~ *victim*
10 pursuant to this section shall be applied to reduce the amount of
11 the unsatisfied judgment or order.

12 (6) “Materials” means books, magazine or newspaper articles,
13 movies, films, videotapes, sound recordings, *propaganda*,
14 *memorabilia*, interviews or appearances on television and radio
15 stations, and live presentations ~~of any kind, the value of which is~~
16 *enhanced by the notoriety gained from the commission of a*
17 *felony for which a convicted felon was convicted.*

18 (7) ~~“Story” means a depiction, portrayal, or reenactment of a~~
19 ~~felony and shall not be taken to mean a passing mention of the~~
20 ~~felony, as in a footnote or bibliography.~~

21 (8) “Sale” includes lease, license, or any other transfer or
22 alienation taking place in California or elsewhere.

23 (9) —
24 (8) “Proceeds” means all fees, royalties, real property, or other
25 consideration of any and every kind or nature received by or
26 owing to a felon or his or her representatives, *or profiteer of the*
27 *felony*, for the preparation for the purpose of sale of materials, for
28 the sale of the rights to materials, or the sale or distribution by
29 ~~the convicted felon~~ *person* of materials whether earned, accrued,
30 or paid before or after the conviction. It includes any interest,
31 earnings, or accretions upon proceeds, and any property received
32 in exchange for proceeds.

33 (10) —
34 (9) “Profits” means all income from anything sold or
35 transferred by the felon, a representative of the felon, or a
36 profiteer of the felony, including any right, the value of which
37 thing or right is enhanced by the notoriety gained from the
38 commission of a felony for which a convicted felon was
39 convicted. This income may have been accrued, earned, or paid
40 before or after the conviction. However, voluntary donations or

1 contributions to a defendant to assist in the defense of criminal
2 charges shall not be deemed to be “profits,” provided the
3 donation or contribution to that defense is not given in exchange
4 for some material of value.

5 (b) (1) All proceeds *or profits gained by a convicted felon*
6 *from the preparation for the purpose of sale, the sale of the rights*
7 *to, or the sale of materials that include or are based on the story*
8 *of related to a felony for which a that convicted felon was*
9 *convicted, and 50 percent of all proceeds or profits gained by*
10 *any profiteer of a felony who is not a convicted felon,* shall be
11 subject to an involuntary trust for the benefit of the ~~beneficiaries~~
12 *victims* set forth in this section. That trust shall continue until five
13 years after the time of payment of the proceeds to the felon or
14 five years after the date of conviction, whichever is later. If an
15 action is filed by a ~~beneficiary~~ *victim* to recover his or her
16 interest in a trust within those time limitations, the trust character
17 of the property shall continue until the conclusion of the action.
18 At the end of the five-year trust period, any proceeds that remain
19 in trust that have not been claimed by a ~~beneficiary~~ *victim* shall
20 be transferred to the Controller, to be allocated to the Restitution
21 Fund for the payment of claims pursuant to ~~Section 13969~~
22 *Chapter 5 (commencing with Section 13950) of Division 3 of*
23 *Title 2 of the Government Code.*

24 ~~(2) All profits shall be subject to an involuntary trust for the~~
25 ~~benefit of the beneficiaries set forth in this section. That trust~~
26 ~~shall continue until five years after the time of payment of the~~
27 ~~profits to the felon or five years after the date of conviction,~~
28 ~~whichever is later. If an action is filed by a beneficiary to recover~~
29 ~~his or her interest in a trust within those time limitations, the trust~~
30 ~~character of the property shall continue until the conclusion of~~
31 ~~the action. At the end of the five-year trust period, any profits~~
32 ~~that remain in trust that have not been claimed by a beneficiary~~
33 ~~shall be transferred to the Controller, to be allocated to the~~
34 ~~Restitution Fund for the payment of claims pursuant to Section~~
35 ~~13969 of the Government Code.~~

36 ~~(3)~~ Notwithstanding paragraph ~~(2)~~ (1), in the case of a sale or
37 transfer by a profiteer of the felony, the court in an action under
38 subdivision (c) shall, upon an adequate showing by the profiteer
39 of the felony, exclude from the involuntary trust that portion of
40 the profits that represents the inherent value of the memorabilia,

1 property, or thing sold or transferred and exclusive of the amount
2 of the enhancement to the value due to the notoriety of the
3 convicted felon.

4 (3) *This subdivision does not apply to materials that make only*
5 *a passing reference to, or mention of, the felony in question.*

6 (c) ~~(1)~~ Any ~~beneficiary~~ *victim* may bring an action against a
7 convicted felon, representative of the felon, or a profiteer of a
8 felony to recover his or her interest in the trust established by this
9 section.

10 ~~(2)~~ That action may be brought in the superior court of the
11 county in which the ~~beneficiary~~ *victim* resides, or of the county in
12 which the convicted felon resides, or of the county in which
13 proceeds or profits are located.

14 ~~(3)~~ If the court determines that a ~~beneficiary~~ *victim* is entitled
15 to proceeds or profits pursuant to this section, the court shall
16 order the payment from proceeds or profits that have been
17 received, and, if that is insufficient, from proceeds or profits that
18 may be received in the future.

19 (d) If there are two or more ~~beneficiaries~~ *victims* and if the
20 available proceeds or profits are insufficient to pay all
21 ~~beneficiaries~~ *victims*, the proceeds or profits shall be equitably
22 apportioned among the ~~beneficiaries~~ *victims* taking into account
23 the impact of the crime upon them.

24 Prior to any distribution of any proceeds to a ~~beneficiary~~
25 *victim*, the court shall determine whether the convicted felon has
26 failed to pay any portion of a restitution fine or penalty fine
27 imposed by a court, or any restitution imposed as a condition of
28 probation. The court shall also determine whether the *convicted*
29 felon is obligated to reimburse a governmental entity for the
30 costs of his or her defense and whether a portion of the proceeds
31 is needed to cover his or her reasonable attorney's fees incurred
32 in the criminal proceeding related to the felony, or any appeal or
33 other related proceeding, or in the defense of the action brought
34 under this section. The court shall order payment of these
35 obligations prior to any payment to a beneficiary, except that 60
36 percent of the proceeds or profits shall be reserved for payment
37 to the beneficiaries.

38 (e) (1) The Attorney General may bring an action to require
39 proceeds or profits received by a convicted felon to be held in an
40 express trust in a bank authorized to act as a trustee.

1 (2) An action may be brought under this subdivision within
2 one year after the receipt of proceeds or profits by a convicted
3 felon or one year after the date of conviction, whichever is later.

4 That action may be brought in the superior court of any county
5 in which the Attorney General has an office.

6 (3) If the Attorney General proves that the proceeds or profits
7 are proceeds or profits from the sale of ~~a story~~ *any material* or
8 thing of value that are subject to an involuntary trust pursuant to
9 this section, and that it is more probable than not that there are
10 ~~beneficiaries~~ *victims* within the meaning of this section, the court
11 shall order that all proceeds or profits be deposited in a bank and
12 held by the bank as trustee of the trust until an order of
13 disposition is made by a court pursuant to subdivision (d), or
14 until the expiration of the period specified in subdivision (b).

15 (4) If the Attorney General prevails in an action under this
16 subdivision, the court shall order the payment from the proceeds
17 or profits to the Attorney General of reasonable costs and
18 attorney's fees.

19 (f) (1) In any action brought pursuant to this section, upon
20 motion of a party the court shall grant a preliminary injunction to
21 prevent any waste of proceeds or profits if it appears that the
22 proceeds or profits are subject to the provisions of this section,
23 and that they may be subject to waste.

24 (2) Upon motion of the Attorney General or any potential
25 ~~beneficiary~~ *victim*, the court shall grant a preliminary injunction
26 against a person against whom an indictment or information for a
27 felony has been filed in superior court to prevent any waste of
28 proceeds or profits if there is probable cause to believe that the
29 proceeds or profits would be subject to an involuntary trust
30 pursuant to this section upon conviction of this person, and that
31 they may be subject to waste.

32 (g) Any violation of an order of a court made pursuant to this
33 section shall be punishable as contempt.

34 (h) The remedies provided by this section are in addition to
35 other remedies provided by law.

36 No period of limitations, except those provided by this section,
37 shall limit the right of recovery under this section.

38 SEC. 3. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the
3 penalty for a crime or infraction, within the meaning of Section
4 17556 of the Government Code, or changes the definition of a
5 crime within the meaning of Section 6 of Article XIII B of the
6 California Constitution.

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